

**THE UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

Walter Cleary <div style="text-align: right;">Plaintiff(s)</div>  v.  Thomas M. King, Sr. <div style="text-align: right;">Defendant(s)</div>	Civil Action  No. 3:22-cv-07257   <b>JURY TRIAL DEMANDED</b>
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**ANSWER OF DEFENDANT, THOMAS M. KING, SR. TO  
PLAINTIFF'S COMPLAINT WITH AFFIRMATIVE DEFENSES**

1. Admitted.
2. Admitted.
3. Denied. The averments contained in this paragraph state conclusions of law to which no response is required.
4. Denied. The averments contained in this paragraph state conclusions of law to which no response is required.
5. Admitted.
6. Denied. The averments contained in this paragraph state conclusions of law to which no response is required.
7. Denied. The averments contained in this paragraph state conclusions of law to which no response is required.
8. Denied. After reasonable investigation, Answering Defendant lacks sufficient knowledge or information to form a belief as to the truth of the averments contained in this paragraph and, therefore, denies same and demands strict proof thereof at trial.
9. Denied. After reasonable investigation, Answering Defendant lacks sufficient knowledge or information to form a belief as to the truth of the averments contained in this paragraph and,

therefore, denies same and demands strict proof thereof at trial.

10. Denied. The averments contained in this paragraph state conclusions of law to which no response is required.

11. Denied.

12. Denied. The averments contained in this paragraph state conclusions of law to which no response is required.

### **COUNT I**

13. Answering Defendant hereby incorporates all previous averments as if fully set forth herein at length.

14. Denied. The averments contained in this paragraph state conclusions of law to which no response is required.

**WHEREFORE**, Answering Defendant hereby demands judgment in its favor and against all other parties, with costs of suit, attorney fees and such other relief as this Honorable Court deems appropriate.

### **COUNT II**

15. Answering Defendant hereby incorporates all previous averments as if fully set forth herein at length.

16. Denied. The averments contained in this paragraph state conclusions of law to which no response is required.

17. Denied. The averments contained in this paragraph state conclusions of law to which no response is required.

18. Denied. The averments contained in this paragraph state conclusions of law to which no response is required.

19. Denied. The averments contained in this paragraph state conclusions of law to which no response is required.

**WHEREFORE**, Answering Defendant hereby demands judgment in its favor and against all other parties, with costs of suit, attorney fees and such other relief as this Honorable Court deems appropriate.

**FIRST AFFIRMATIVE DEFENSE**

Plaintiff's Complaint fails to state a claim upon which relief may be granted.

**SECONDAFFIRMATIVE DEFENSE**

Plaintiff's claims are barred by the applicable Statute of Limitations and/or Laches.

**THIRDIXTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred by the applicable Statute of Repose.

**FOURTH AFFIRMATIVE DEFENSE**

The Answering Defendant owed no duty to Plaintiff at the time of Plaintiff's alleged injuries.

**FIFTH AFFIRMATIVE DEFENSE**

The Answering Defendant performed each and every duty owed to Plaintiff.

**SIXTH AFFIRMATIVE DEFENSE**

At all times relevant hereto, the Answering Defendant acted in a reasonable and proper manner.

**SEVENTH AFFIRMATIVE DEFENSE**

The Answering Defendant at all times relevant hereto complied with all federal, state and local statutes, regulations and/or ordinances in effect.

**EIGHTH AFFIRMATIVE DEFENSE**

Plaintiff is estopped from enforcing more stringent regulations and/or requirements than were in effect at the time of the alleged offense.

**NINTH AFFIRMATIVE DEFENSE**

Plaintiff assumed the risk.

**TENTH AFFIRMATIVE DEFENSE**

Plaintiff was contributorily negligent.

**ELEVENTH AFFIRMATIVE DEFENSE**

Plaintiff is barred from recovery if the Plaintiff's negligence exceeded fifty percent (50%) or exceeded the total percentage of negligence, if any, of the Answering Defendant.

**TWELFTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred or must be reduced pro rata due to Plaintiff's comparative and/or contributory negligence.

**THIRTEENTH AFFIRMATIVE DEFENSE**

Any injuries or damages allegedly sustained by Plaintiff were caused through the sole negligence of the Plaintiff.

**FOURTEENTH AFFIRMATIVE DEFENSE**

The negligence, if any, on the part of the Answering Defendant was not the proximate cause of any injuries or damages which may have been sustained by the Plaintiffs.

**FIFTHTEENTH AFFIRMATIVE DEFENSE**

Any injuries or damages which may have been sustained by the Plaintiff were the result of an unavoidable accident.

**SIXTEENTH AFFIRMATIVE DEFENSE**

The claims of Plaintiff are barred by his failure to mitigate damages.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

If the damages of Plaintiff are true and proven, which are denied, then such damages were caused by conditions over which the Answering Defendant had no control.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

If the damages of the Plaintiff are true and proven, which are denied, then such damages were not caused by any conduct of Answering Defendant, which was secondary and passive, but were caused by the primary and active conduct of third parties over whom the defendant had no control.

**NINETEENTH AFFIRMATIVE DEFENSE**

The Answering Defendant hereby reserves the right to interpose such other defenses as discovery may disclose.

**WHEREFORE**, Answering Defendant hereby demands judgment in his favor and against all other parties, with costs of suit, attorney fees and such other relief as this Honorable Court deems appropriate.

**KENT & MCBRIDE, PC**

By: 

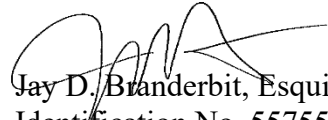
Jay D. Branderbit, Esquire  
Identification No. 55755  
Attorney for Defendant,  
Thomas M. King, Sr.

**CERTIFICATION OF SERVICE**

I, Jay D. Branderbit, certify that on January , 2023 I filed the foregoing Answer to Plaintiff's Complaint with Affirmative Defenses electronically and it is now available for viewing and downloading from the Court's Electronic Case Filing System, which is service on all registered and interested users in this action.

**KENT & MCBRIDE, PC**

By:

  
Jay D. Branderbit, Esquire  
Identification No. 55755  
Attorney for Defendant,  
Thomas M. King, Sr.